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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): VOGELSANG ET AL.
Application No.: 10/527,262
For: DRIVE UNIT COMPRISING A RETARDER
Filed: October 4, 2005
Examiner: Thomas J. Williams
Art Unit: 3683
Confirmation No.: 2929
Customer No.: 27,623 Attorney Docket: WW030USU

Mail Stop Petitions
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Office of Petitions

**PETITION FOR REVIVAL OF PATENT APPLICATION
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Dear Sir:

The above-identified application became abandoned for failure to **timely file a proper reply to the Office Action mailed on September 4, 2007** which sets a **six (6)** month period for reply (including a total extension of time of 3 months) which expired on March 4, 2008. The abandonment date of this application is **May 8, 2008**.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION
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NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or Issue Fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☐ Small entity - fee \$770.00 (37 CFR §1.17(m))
 ☐ Small entity statement enclosed herewith.
 ☐ Small entity statement previously filed.
- ☒ Other than small entity - fee **\$1,540.00** (37 C.F.R. §1.17(m))

2. Reply and/or Fee

- A. The reply to the above-noted Office Action in the form of an **Amendment** (identify type of reply):
 XXX has been filed previously on **December 4, 2007** (copy enclosed).
 _____ are enclosed herewith.

- B. A firm check for \$ _____ covering the following fees:

- (1) \$ _____ Issue Fee
(2) \$ _____ for 10 advance copies of the patent; extension fee
(3) \$1,540.00 petition fee.

_____ has been paid previously on _____
_____ is enclosed herewith.

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d) of \$ _____ for a small entity or \$ _____ for other than a small entity) equivalent to the number of months from abandonment to the filing of this petition is enclosed herewith.

4. Verified Statement

Applicant hereby states that the entire delay in filing a reply to the Office Action dated September 4, 2007 until the filing of this petition under 37 CFR 1.137(b) was unintentional.

We received an Office Action dated September 4, 2007. On December 4, 2007, we filed an Amendment (with transmittal). The Amendment had the correct application number (10/527,262) on the first page, but the transmittal had the incorrect application number (10/~~257~~,262) listed on the first page. The return receipt postcard also had the correct application number (10/527,262) on it. The Amendment, transmittal (with corrected cover page) and return receipt postcard (stamped as received by the USPTO) are enclosed.

On December 5, 2007, the paralegal, Suzanne Lombardo realized what had happened and contacted the Examiner (Thomas Williams) to discuss the situation. She spoke to the Examiner and he (the Examiner) stated that it would not be a problem because we responded in time and the correct application number was on the Amendment itself but he would check with his supervisor anyway and call back if there

would be a problem. The Examiner never called back, so we assumed that there were no problems.

Then, we received a Notice of Abandonment (dated May 8, 2008). On May 16, 2008, the paralegal, Suzanne Lombardo called the Examiner (Thomas Williams) to find out why a Notice of Abandonment was issued in this application. The Examiner stated that he remembered speaking to the paralegal on December 5, 2007 and is not sure why this application went abandoned. He also said that a Petition must be submitted to revive this application.

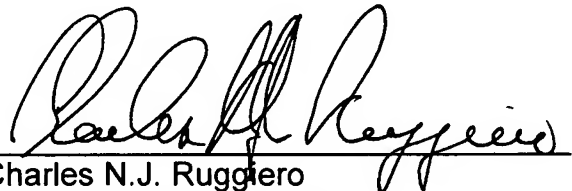
We do not believe that we should be charged the Petition fee of \$1540.00 due to the fact that the Examiner was contacted as soon as the problem was discovered (December 5, 2007) and he (the Examiner) stated that it would not be a problem. The Examiner should have handled the problem on December 5, 2007. If that was the case, the Notice of Abandonment would have never been issued.

Applicant hereby declares that all statements made herewith of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

XXX The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. §§1.16 and 1.17 which may be required with this communication or credit any overpayment, to **Deposit Account No. 01-0467**. A duplicate copy of this Form is enclosed.

August 20, 2008

Date



Charles N.J. Ruggiero
Attorney for Applicant(s)

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CERTIFICATE OF EXPRESS MAILING

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Certificate No. **EV774339413US**, service under 37 CFR §1.10 and is addressed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Attention: Office of Petitions on August 20, 2008.

Suzanne Lombardo

(Typed name of person mailing paper)



(Signature of person mailing paper)



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Suzanne Lombardo

(Typed name of person mailing paper)



(Signature of person mailing paper)